

**INDIANA JUDICIAL NOMINATING COMMISSION**  
**INDIANA COMMISSION ON JUDICIAL QUALIFICATIONS**

**Fiscal Year 2005-2006**

**Meg Babcock, Counsel**

The Indiana Judicial Nominating Commission/Indiana Commission on Judicial Qualifications is a seven-member commission established by Article VII, Section 9, of the Constitution of Indiana. It performs two distinct functions within the judiciary. The Nominating Commission appoints the Chief Justice of Indiana from among the five Supreme Court Justices. It also solicits and interviews candidates to fill vacancies on the Supreme Court, the Court of Appeals, and the Tax Court. The Nominating Commission selects three candidates for each vacancy, and the Governor appoints one of the nominees to fill the vacancy. (There were no vacancies in fiscal year 2005-2006.) The Nominating Commission also certifies former judges as Senior Judges to help qualifying courts with their caseloads.

The Qualifications Commission investigates allegations of ethical misconduct brought against Indiana judges, judicial officers, and candidates for judicial office. Periodically, the Commission privately cautions judges who have committed relatively minor or inadvertent violations of the Code of Judicial Conduct. In the most serious cases, the Commission prosecutes formal disciplinary charges in public proceedings. These charges ultimately are resolved by the Supreme Court. Additionally, the Commission and its staff provide judges and judicial candidates with advice about their ethical obligations.

The Chief Justice of Indiana, Randall T. Shepard, is the *ex officio* Chairman of the Nominating Commission and the Qualifications Commission. The Commission is comprised additionally of three lawyers, elected by other lawyers in their districts, and three non-lawyers who are appointed by the Governor, all to three-year terms. The elected and appointed Commission members serving in 2005-2006 were James O.

McDonald, Esq., Terre Haute; Derrel E. Zellers, Tell City; James H. Young Esq., Indianapolis; Payton Wells, Indianapolis, and Sherrill Wm. Colvin, Esq., Fort Wayne. John O. Feighner, Esq., Fort Wayne, completed his term during the fiscal year. The Governor's appointment to a vacated Third District seat is pending.

The Nominating Commission met on five occasions during the fiscal year. It recertified eighty-six Senior Judges, certified five new Senior Judges, and declined to certify five applicants for Senior Judge status.

In fiscal year 2005-2006, the Judicial Qualifications Commission met on six occasions and considered three hundred fifty-seven complaints alleging judicial misconduct. One hundred seventy-eight complaints were dismissed summarily on the basis they did not raise valid issues of judicial misconduct, but were complaints about the outcomes of cases or otherwise were outside the Commission's jurisdiction. Another one hundred forty-three were dismissed on the same grounds after Commission staff examined court documents or conducted informal interviews.

Of the remaining thirty-six cases on the Commission's docket, the Commission requested the judges' responses to the allegations and conducted investigations. Of those, thirteen complaints were dismissed after the Commission concluded the judges had not violated the Code of Judicial Conduct. The Commission privately cautioned thirteen judges for deviations from their ethical obligations. The Commission's decision to caution a judge rather than proceed to formal, public charges depends upon the seriousness of the violation, the judge's acknowledgement of the violation, whether or not the conduct was intentional or inadvertent, whether the judge has a history of meritorious complaints, and other mitigating or aggravating circumstances. The subjects of the thirteen cautions, in order of frequency, related to misuse of the court's power (4), delayed rulings (3), allowing the appearance of partiality (2), deviations from precedent or court rules (2), staff conflicts (2), improper campaign conduct (1), nepotism (1), and failure to disqualify (1). (Some cautions related to more than one violation.)

Three public disciplinary proceedings were resolved during the fiscal year. In *Matter of Danikolas*, the Supreme Court issued an opinion in December 2005 suspending

the judge for sixty days without pay after the Court concluded the Commission proved during a January 2005 hearing that the judge improperly had retaliated against a Magistrate when he terminated her employment. *Matter of Danikolas*, 838 N.E.2d 422 (Ind. 2005).

In *Matter of Pfaff*, the Commission charged the former judge with accosting a man at gunpoint, then providing false statements about the event. In July 2005, the case proceeded to a hearing before the Honorable Steve David, Boone Circuit Court, the Honorable Daniel F. Donahue, Clark Circuit Court, and the Honorable Susan Orr Henderson, Fountain Circuit Court. After the Masters reported to the Supreme Court their conclusions that the judge should be removed from office, the judge resigned. In November 2005, the Court accepted the resignation and issued an order prohibiting him from any future judicial service. *Matter of Pfaff*, 838 N.E.2d 1022 (Ind. 2005).

In another case, the Commission found probable cause to file charges against the Honorable Christopher Haile for issuing an *ex parte* custody order. Commissioner Haile agreed to accept a Commission Admonition in lieu of public charges; therefore, charges were not filed, and the Commission publicly admonished him. (Public Admonition of the Honorable Christopher B. Haile, Marion Superior Court, Civil Division 11, October 17, 2005.)

The Commission filed charges against one judge during the fiscal year. In *Matter of Cruz*, Cause No. 49S00-0603-JD-80, the Commission charged Commissioner Cruz with misconduct after his arrest for driving while intoxicated. The parties entered into a settlement agreement instead of proceeding to a hearing; at the conclusion of the fiscal year, the agreement was pending before the Supreme Court for its approval. Also at the end of the fiscal year, six cases were pending before the Commission.

Finally, Commission counsel responded to several hundred requests for advice from judges and judicial candidates about their obligations under the Code of Judicial Conduct.

A more detailed report about the Commission, its members and activities may be found at [www.IN.gov/judiciary/jud-qual](http://www.IN.gov/judiciary/jud-qual).